IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION

Writ Petition No.5329 of 2005

Smt Anita Anil Ovalekar and anr...petitioners

vs

Rupee Coop Bank Ltd and ors.. respondents

Mr H V Kode for petitioners

Mr.C.P.Deogirikar for respondent no.l

Mr A H Palekar AGP for respondent nos.2 and 3

with

Writ Petition No.5669 of 2005

Smt Dhanamma Annapa Mahajan & ors..petitioners

vs

Dy Registrar Coop Societies

Miraj and ors .. respondents

Mr Ashutosh M Kulkarni for petitioners

Mr. A H Palekar AGP for respondent nos.l and 8

Mr. N V Walawalkar with Mr G H Keluskar for respondent no. 2

with

Writ Petition No.5670 of 2005

Smt Dhanamma Annappa Mahajan & ors.. petitioners

vs

Deputy Secretary Coop Societies

and ors.. respondents

Mr.Ashutosh M Kulkarni for petitioners
Mr A.H.Palekar AGP for State Mr. Mr Walawalkar with G.H.Keluskar for respondent no. 2

with

Writ Petition No.l0772 of 2004

Himalaya Hosiery Prof Narasayya L Shrikonda.. petitioner

vs

l. The State of Ma and ors ..respondents

Mr. S.S.Shah for petitioner
Mr. A.H.Palekar AGP for State
Mr. P S Dani for respondent no.4

CORAM: S.U.KAMDAR J.

Dated:22nd December 2005

Judgement: (Per S U Kamdar J.)

l. All these writ petitions are raising a common question of law as to the retrospective operation of section l54(2A) of the Maharashtra Cooperative Societies Act, l960, hereinafter referred to as the said Act, hence same are disposed of by this common judgment. Some of the brief facts in respect of each of the petition in so far as it is material for determination of the question of law raised

before me are as under.

2. In Writ Petition No. 5729 of 2005 the petitioner is carrying on business in the name and style of M/s Anita Colour Industries and he availed a loan facility from the Thane Peoples Cooperative Bank Ltd. On 27.l2.l984 the Thane Peoples Cooperative Bank Ltd issued a notice of demand for recovery of Rs.l.75 lacs because the petitioner defaulted in repayment of the loan. The said Thane Peoples Coop Bank Ltd has been subsequently taken over by Rupee Cooperative Bank Ltd. On 24.4.l996 the petitioner demanded various details of documents and accounts from the said respondent no.l bank. On 28.6.l996 the respondent no.l bank issued a notice for recovery of the aforesaid amount and the petitioner no.l replied the said notice by their letter dated 5.7.l996. One of the contentions raised was that the claim is already barred by the law of limitation. Subsequent to the aforesaid the respondent no.l filed an application before the Dy Registrar of Coop Societies for issuance of a recovery certificate under section l0l of the said Act. In reply thereto the petitioner by their letter dated 25.9.l998 denied their liability to pay. On 25.2.l999 a recovery certificate has been issued . The said order was

challenged by filing revision application on 25.2.l999. On 23.8.2000 by the amending Act being Maharashtra Act no.4l of 2000 sub-section (2A) to the provisions of section l54 of the said Act was inserted. On 29.3.2004 both parties filed written submissions and pursuant thereto on l7.l.2005 an order came to be passed by the appellate authority rejecting the revision application on the ground that there is no compliance with the newly added provisions of section l54(2A) of the said Act which inter alia provides for deposit of 50% of the amount as awarded by the recovery certificate by the lower authority. It is this order which is challenged in the present petition.

3. In Writ Petition No.5669 of 2005 the 3rd respondent was a partnership firm to which one deceased Anna Dhondappa Mahajan was a partner alongwith other respondents. The 3rd respondent obtained loan from the 2nd respondent bank i.e.Sangli Cooperative Bank Ltd. In view of the fact that the 3rd respondent was in arrears of loan amount the 2nd respondent bank initiated proceedings under section l0l of the said Act for recovery of the loan amount lent and advanced by the said bank. Pursuant to the said application recovery notices were issued and ultimately on

28.4.l999 a recovery certificate was issued by the Dy Registrar of Coop Societies exercising his power conferred under section l0l of the said Act. The petitioners are the legal heirs of the deceased Anna Mahajan. Against the said recovery certificate respondent nos. 4 and 5 preferred revision application nos. 270 and 27l of 2000 and by order dated 6.9.2000 said recovery certificate was set aside and the matter was remanded back to the Dy Registrar of Coop Societies for fresh hearing. The matter was heard and certain preliminary orders were passed which were the subject matter of challenge in the revision application no.33 of 200l. The said revision application was also allowed and the matter was remitted once again back to the Dy Registrar. Thereafter the matter was heard afresh on 22.l0.2002 and the recovery certificate has been issued. Under the said recovery certificate it is inter alia stated that the bank must recover first from the movable and immovable property of the principal borrower and thereafter from the other respondents who are sued in the capacity as guarantors.It is the case of the petitioners that they had no knowledge or notice of the said application and therefore they did not remain present before the authorities.It is the case of

the petitioners that the petitioners received notice of attachment of their property pursuant to the said recovery certificate and therefore moved a revision application being Revision Application no. l82 of 2005. The said revision application has been dismissed for non compliance of the provisions of section l54(2A) of the said Act, which order is challenged before me in this petition.

4. In Writ Petition No.5670 of 2005 the facts are identical and another loan which was granted by the bank has been the subject matter of the said writ petition.

5. In Writ Petition No. l0772 of 2005 the facts are that pursuant to a loan obtained from the respondent no l bank and for non payment thereof the respondent no. 4 moved an application under section l0l of the said Act which was granted. The respondent no.2 is the Vikas Sahakari Coop Bank Ltd. The said recovery certificate was challenged by filing revision application sometime in or about 24.8.2000. The said revision application was dismissed on l4.9.2004 once again for non compliance of the provisions of section l54(2A) of the said Act and it is this order which is challenged in this petition.

6. The learned counsels for the petitioners have contended before me that the provisions of amended section l54(2A) which are introduced by the Amending Act No.4l of 2000 on 23.8.2000 have no retrospective operation and thus cannot apply to the proceedings which were initiated prior to the said Amending Act coming into operation on 23.8.2000. It is their contention that right to file revision is crystallized and became vested as on the date when the application is made for issuance of recovery certificate by the respondent banks under the provisions of section l0l of the said Act . It is contended that by the amending provisions of section l54(2A) of the said Act vested right of filing revision which is crystallized as on the date of filing of the recovery certificate application under section l0l of the said Act cannot be deprivated or can be affected by subsequent amendment to the provisions of the said Act. It is further contended that the provisions of section l54(2A) of the said Act are prospective in effect and are not retrospective and, therefore, only applies to those proceedings which are initiated for the first time after the Amending Act was introduced on 23.8.2000. All the petitioners have placed strong reliance on the

judgment of the Apex Court in the case of Ramesh Singh and anr vs Cinta Devi and ors reported in l996(3) SCC l42, and more particularly reliance is placed on paras 4 and 5 thereof which is reproduced herein below:

> "4. The High Courts of Allahabad and Madhya Pradesh have, vide Oriental Insurance Co Ltd vs Dhanram Singh, AIR l990 All l04 and Jaswant Rao vs Kamlabai AIR l990 MP 354 held that in such circumstances the appellant's right to appeal without being required to make the deposit under the first proviso to section l73 of the New Act remains unaffected . However, the judgment impugned herein takes a different view. Hence there is controversy which needs to be resolved.
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> 5. In our view the point at issue stands squarely covered by three decisions of this court reported in Hoosein Kasam Dada (India) Ltd vs State of M P, l953 SCR 987, State of Bombay vs. Supreme General Films Exchange Ltd, AIR l960 SC 980, and Vithalbhai Naranbhai Patel vs CST AIR l967 SC 344. In all these decisions the view taken is that unless the New Act expressly or by necessary

> implication makes the provision applicable retrospectively, the right of appeal will crystalise in the appellant on the institution of the application in the Tribunal of first instance and that vested right of appeal would not be dislodged by the enactment of the New Act. In other words,the appellant would be entitled to file the appeal without being required to make the deposit under the proviso to section l73 of the New Act. The law therefore seems to be fairly well settled by the said three decisions of this court"

7. The learned counsel for the petitioners have thereafter relied upon the judgment of the Apex Court in the case of M/s Hoosein Kasam Dada (India) Ltd vs. The State of Madhya Pradesh and ors, AIR l953 SC 22l reported in AIR and particularly para 8 thereof has been relied upon. The petitioners have also relied upon a judgment in the case of Vithalbhai Naranbhai Patel vs. Commissioner of Sales Tax,M P Nagpur, AIR l967 SC 344 . Both the aforesaid judgments are referred to and relied upon by the Apex Court in the case of Ramesh Singh (supra) and have taken the similar view. By relying upon the aforesaid judgments it has been

contended that filing of revision proceedings is vested right and similar to the appeal and thus by subsequent Amending Act said vested right cannot be deprivated or denied.

8. It is also contended by the petitioners by relying upon the judgment in the case of Hitendra Vishnu Thakur and ors vs State of Maharashtra and ors, reported in (l994) 4 SCC 602, and particularly paras 25 and 26 thereof by which the Apex Court has held that the Amending Act cannot operate retrospectively so as to deprive the vested right in a party, unless it specifically provides for the same. An issue of prospectivity or retrospectively has been considered by the Apex Court and in para 26 of the said judgment and the Apex Court has laid down certain guiding principles. One of the principles mentioned is that every litigant has a vested right in substantive law but no such right exists in procedural law. Another principle set out therein is that the procedural statute should not generally speaking be applied retrospectively where the result would be to create new disabilities or obligations or to impose new duties in respect of the transactions already accomplished. By relying upon the aforesaid principles the learned counsel for the petitioners

have contended that the aforesaid judgments make it clear that the right of revision is a vested right and such right must be protected and cannot be deprivated by putting additional condition of deposit of 50% of the amount awarded by the recovery certificate while filing revision application.

9. The petitioners have also relied upon the judgment of the division bench of this Court in the case of Kausalya Sampt vs Vasant Sahkari Bank Ltd and ors, 2004(4) Mah LJ 795, to which I am a party. In the said judgment the division bench of this court has upheld the constitutional validity of the provisions of section l54(2A) of the said Act. It is held therein that the section is valid and there is no infirmity or constitutional disability to hold that the provisions of the said section are ultravires. Another division bench of this court in the case of Vasundhara Ashokrao Patil vs Rajaram Bapu Sahakari Bank Ltd, 2003(4) Mah LJ 3l5 as well as the learned Single Judge in the case of Juhu Coop Housing Society Ltd Mumbai vs State of Maharashtra, 2004(2) Mah LJ 779 have dealt with the provisions of section l54. The case in Vasundara (supra) has no much relevance because the issue there was only whether in the light of the

provisions of section l54 the recovery certificate can be challenged under section 9l of the said Act or the remedy is by way of revision under section l54 of the said Act. In the case of Juhu Coop Housing Society (supra) the only question was that whether exercising power of revision is quasi judicial and whether revisional authority is required to apply his mind. A judgment of the Apex Court is also relied upon in the case of Land Acquisition Officer cum DSWO AP vs B V Reddy and Sons, reported in 2002(2) SCC 463 where the Amending Act no.60 of l984 introduced under the Land Acquisition Act was the subject matter of challenge and it was held that the same is not retrospective in effect.

l0. On the other hand the learned counsel for the respondents have contended that there is distinction between the revisional jurisdiction and appellate jurisdiction. It has been contended that the appeal is a statutory right and is vested in a party by a statute and once there is a proceedings commenced then the said vested right stands crystallized in favour of the party who has filed the said proceedings. It has bee contended that the provision of revision and provision of appeal are both distinct and different, both in its form

and in its substance. It has been contended that the revisional power is the discretion vested in the authority and does not give any vested right in the party to claim the said right as a matter of law. It has been contended further that even in substance the jurisdiction exercised by the revisional authority is distinct than what is exercised by the appellate authority. It has been thus contended, relying upon the judgment of the Apex Court in the case of Ramesh Singh (supra) inter alia holding that the provision of deposit cannot be introduced subsequently for filing appeal because the right of the litigant stood crystallized as on the date of commencement of the litigation would not apply on the facts of the present case. It has been contended that revision is not a vested right and, therefore, the said proceedings can be controlled by the legislature by providing provision of deposit as has been done by the Amending Act no.40 of 2000 by introducing sub-section (2A) of section l54 of the said Act. It has been further contended that the jurisdiction of the authority in revision is narrower than what is conferred on the appellate authority. It is further contended that the appeal is a vested right in a person whereas the jurisdiction vested in the revision proceedings is discretionary and it is for

the authority to decide whether he should exercise the same or even to refuse to exercise the same. In the light of the aforesaid distinction it has been submitted that the contentions raised by the learned counsel for the petitioners have no merit and are required to be rejected.

ll. The learned counsel appearing for the respondents and State of Maharashtra,in support of the aforesaid contention relied upon the judgment of the Apex Court in Everest Apartments Coop Housing Society Ltd Bombay vs State of Maharashtra and ors, AIR l966 SC l499 more particularly paras 5 and 6 thereof which read as under:

> "5.There is no doubt that s l5l is potential but not compulsive. Power is reposed in Government to intervene to do justice when occasion demands it and of the occasion for its exercise. Government is made the sole judge. This power can be exercised in all cases except in a case in which a similar power has already been exercised by the Tribunal under S l49(9) of the Act. The exception was considered necessary because the legality or the propriety of an order having once been considered, it would be an

act of supererogation to consider the matter twice. It follows, therefore, that Government can exercise its powers under S l54 in all cases with one exception only and that the finality of the order under S 23(3) does not restrict the exercise of the power. The word ‘final’ in this context means that the orders is not subject to an ordinary appeal or revision but it does not touch the special power legislatively conferred on Government. The Government was in error in considering that it had no jurisdiction in this case for it obliviously had.

6. There remains the question whether a party has a right to move Government. The Tribune Trust case is distinguishable and cannot help the submission that Government cannot be moved at all. The words of the two enactments are not materially equal.The Income Tax Act used the words ‘suo motu’ which do not figure herein. It is,of course,true that the words ‘on an application of a party’ which occur in s l50 of the Act and in similar enactments in other Acts, are also not to be found. But that does not mean that a party is

prohibited from moving Government. As Government is not compelled to take action unless it thinks fit, the party who moves Government cannot claim that he has a right of appeal or revision. On the other hand, Government should welcome such applications because they draw the attention of Government to cases in some of which Government may be interested to intervene. In many statutes, as for example the two major procedural Codes, such language has not on not inhibited the making of applications to the High Court, but has been considered to give a right to obtain intervention, although the mere making of the application has not clothed a party with any rights beyond bringing a matter to the notice of the Court. After this is done it is for the Court to consider whether to act or not. The extreme position does not obtain here because there is no right to interference in the same way as in a judicial proceedings. Government may act or may not act, the choice is of Government. There is no right to relief as in an appeal or revison under the two Codes. But to say that Government has no jurisdiction at all

in the matter is to err and that is what Government did in this case".

l2. In Writ Petition No.5329 of 2005 an additional point has been raised by the learned counsel for the petitioners that even if the provision of revision application is applicable according to the contention of the respondents, still the said provisions of section l54(2A) would not apply to his case because he has filed the revision itself prior to the Amending Act was introduced in 2000and the said revision having been entertained, this question of applying the provisions of section l54(2A) do not rise . It has been contended that even ifthe respondents are right then also the provisions of section l54(2A) would only apply to those cases where revisions are filed subsequent to the introduction of amending provision and not prior thereto.

l3. I have considered the rival submissions of the parties and I am of the opinion that the issue raised which is required to be determined is whether revisional jurisdiction gives vested right in a litigant as on the date when the application forn recovery of the dues under sec.101 of the Act has been filed and if it is so then obviously in

the light of the judgment of the Apex Court in Ramesh Singh (supra) the provisions of section l54(2A) of the said Act cannot be made applicable to a case where revision application is filed prior to the Amending Act no.40 of 2000 which has been brought into force on 23.8.2000 by the respondent-State Government. However if the revision is not conferring a vested right on a litigant then the ratio of the aforesaid judgment would not apply and the provision of section l54(2A) of the said Act would be applicable even in cases where revision is filed after introduction of the said amending provisions irrespective of the fact that an application for recovering the dues by the bank was instituted prior to the introduction of the amended provisions or not.

l4. The distinction between the revision and appeal is well recognized. The well settled distinction was brought out by the Apex Court in the judgment in the case of Hari Shankar and ors; vs. Rao Girdhari Lal Choudhury. AIR l963 SC 698. While considering the jurisdictional test of revision under section ll5 of the Code of Civil Procedure, l908 vice versa jurisdiction of the appellate authority the Apex Court has succinctly set out that both jurisdictions are totally

distinct and different and cannot be held to be synonymous. In para 7 of the said decision it has been observed as under:

> "The distinction between an appeal and a revision is a real one. A right of appeal carries with it a right of rehearing on law as well as fact,unless the statute conferring the right of appeal limits the rehearing in some way, as has been done in second appeals arising under the Code of Civil Procedure. The power to hear a revision is generally given to a superior court so that it may satisfy itself that a particular case has been decided according to law. Under section ll5 of the Civil P C the High Court's powers are limited to see whether in a case decided, there has been an assumption of jurisdiction where none existed, or a refusal of jurisdiction where it did, or there has been material irregularity or illegality in the exercise of that jurisdiction. The right there is confined to jurisdiction and jurisdiction alone. In other Acts the power is not so limited, and the High Court is enabled to call for the record of a case to satisfy

itself that the decision therein is according to law and to pass such orders in relation to the case, as it thinks fit".

l5. Once again in the case of The State of Kerala vs K M Charia Abdulla and Co, AIR l965 SC l583 the Apex Court has held in paras l7 and l9 as under:

".... It cannot, therefore be said that a provision which confers upon the appellate or revising authority power to make such inquiry as such appellate or revising authority considers necessary in itself amounts to enlarging the revisional or appellate jurisdiction. The only difference between the Income Tax Acts and the Madras General Sales Tax Act is that whereas the power to entertain the appeal or revision application and to make orders for further enquiry in the hearing of the appeal or revision is wholly dealt with by the provisions of the Income Tax Acts, under the Madras General Sales Tax Act the revisional jurisdiction and appellate jurisdiction are conferred by the Act, but the power of the appropriate authority in the exercise of the jurisdiction when it appears to the

appellate or revising authority that the correct amount of tax payable by the dealer has not been paid to make a further inquiry as the authority considers necessary is conferred by the Rules. But that is no ground for regarding the conferment of power to travel outside the record of the subordinate taxing authorities as unauthorised. Investment of powers to make such inquiry as the appellate or the revising authority considers necessary can manifestly be invested by cls (k) and (l) of s. l9 sub-s (2) and if such power is invested the rule authorising the making of inquiry is not ultra vires.

".....The revisional power has to be exercised for ascertaining whether the order passed is illegal or improper or the proceeding recorded is irregular and it is in aid of that power that such orders may be passed as the authority may think fit. One of the inquiries in considering the legality or propriety of the orders passed by the subordinate officer which the revising or the appellate authority may make is about the correctness of the tax levied and if

> after perusing the record the authority is prima facie satisfied about the illegality or impropriety of the order or about the irregularity of the proceeding, it may in passing its order direct an additional inquiry. Neither S. l2 nor R l4A authorises the revising authority to nor generally upon inquiries which may properly be made by the assessing authorities and to reopen assessments."

l6. Thereafter in the case of Lachhman Das vs Santokh Singh l995 (4)SCC 20l once again the Apex Court has considered the distinction between the revisional power of the High Court under section ll5 of the CPC and the appellate power. In para l0 of the said judgment it has been observed as under:

> " In the present case sub-section (6) of section l5 of the Act confers revisional power on the High Court for the purpose of satisfying itself with regard to the legality or propriety of an order or proceeding taken under the Act and empowers the High Court to pass such order in relation thereto as it may deem fit.The High Court will be justified in interfering with

the order in revision if it finds that the order of the appellate authority suffers from a material impropriety or illegality. From the use of the expression "Legality or propriety of such order or proceedings" occurring in sub-section (6) of section 115 of the Act, it appears that no doubt the revisional power of the High Court under the Act is wider than the power under section ll5 of the Code of Civil Procedure which is confined to jurisdiction,but it is also not so wide as to embrace within its fold all the attributes and characteristics of an appeal and disturb a concurrent finding that such conclusions are perverse or based on no evidence or based on a superficial and perfunctory approach. If the High Court proceeds to interfere with such concurrent findings of fact ignoring the aforementioned well recognised principles, it wold amount to equating the revisional powers of the High Court as powers of a regular appeal frustrating the fine distinction between an appeal and a revision. That being so unless the High Court comes to the conclusion that the concurrent findings recorded by the two courts below are wholly perverse and

> erroneous which manifestly appear to be unjust there should be no interference. In the present case the two courts below have thoroughly examined and appreciated the parties evidence and have recorded a definite finding, entirely based on the evidence on record that the respondent tenant has ceased to occupy the demised premises since after September l98l and had, in fact, alongwith his wife and family started living in House no.35l, Ward No.7, Karnal, having been acquired by him in the name of his wife".

l7. Thus it is now well settled that there is clear distinction between the revisional power and the appellate power. The revisional power conferred on various authorities is limited power and a discretion is vested in the authority to entertain a revision application of a party for correcting the legality or exfacie perversity of the order impugned therein, whereas in contrast thereto the power of appellate authority is pervasive power, with right to go into all the material which was produced before the trial court or lower authorities, reassess the said evidence and material and come to a different conclusion on

findings of fact than that arrived at by the lower authority. It is thus seen that both in form and substance the power vested in the appellate authority and the revisional authority is distinct and separate. In the light of the aforesaid distinction I am of the view that the revisional provision do not grant any vested right in a litigant. More so because it is, therefore, conferred on the higher authority for the purpose of maintaining purity of judicial system rather than reconsidering the correctness of the decision by the lower authorities. In my view, therefore, revisional jurisdiction does not give any vested right on any of the parties. The judgment cited by the respondents in the case of Everest Coop.Housing Society (supra) is in the context of the Maharashtra Coop Societies Act, l960 itself and it makes it clear distinction between the power of revision and power of the appeal. In the light of the aforesaid legal position it is not possible to accept the contention of the petitioner that by virtue of the judgment in the case of Ramesh Singh (supra) I must hold that the revisional proceedings is a vested right and, therefore, provisions of section l54(2A) of the said Act would not apply. Thus the judgments in Ramesh Singh (supra) and other two judgments relied upon by the petitioners

in the case of Hari Shankar (supra) and Vithalbhai Naranbhai Patel (supra) which have taken identical view would not apply to the facts and circumstances of the present case. In my opinion all the three judgments pertain to the case where statutory right of appeal was vested in a party and were not a case of revision. The distinction between the appeal and revision being so clear and well settled that it is not possible to equate both jurisdiction so as to apply the judgment of the Apex Court by holding the provisions of section l54(2A) do not apply where a revision application for recovery is filed prior to the Amending Act no.4l of 2000 introduced on 23.8.2000. Thus in my opinion the arguments advanced by the petitioners must fail.

l8. However, in Writ Petition No.5329 of 2005 an additional point has been argued that whether the revision application which is filed prior to the introduction of section l54(2A) of the said Act will govern by the provisions of section l54(2A) of the said Act or not. The section l54(2A) of the said Act reads as under:

> " l54(2A) No application for revision shall be entertained against the recovery certificate issued by the Registrar under

> section l0l unless the applicant deposits with the concerned society,fifty per cent amount of the total amount of recoverable dues.

The word used in the said provision is the word "entertain". Once a revision is filed and entertained before the amending Act brought into force though it may not have been finally decided and determined then in my opinion the provisions of section l54(2A) of the said Act cannot apply. Thus the revision application filed and entertained prior to section l54(2A) has been introduced would not be liable to comply to the rigour of provision of sub-section (2A) of deposit of amount.In the judgment in M/s Lakshmiratan Engineering Works Ltd vs Asst Commissioner (Judicial) I Sales Tax Kanpur Range Kanpur and anr, reported in AIR l968 SC 488 the word "entertain" has been considered meaning thereby admit to consideration. In paras 7, 8 and 9 of the said judgment the Apex Court has held as under:

> "7. To begin with it must be noticed that the proviso merely requires that the appeal shall not be entertained unless it is accompanied by satisfactory proof of the

payment of the amount of tax admitted by the appellant to be due. A question thus arises what is the meaning of the word "entertainment" in this context? Does it mean that no appeal shall be admitted or heard and disposed of unless satisfactory proof is available? The dictionary meaning of the word "entertain" was brought to our notice by the parties, and both sides agreed that it means either "to deal with or admit to consideration". We are also of the same opinion. The question , therefore is at what stage can this appeal be said to be entertained for the purpose of the application of the proviso? Is it "entertained" when it is filed or is it "entertained" when it is admitted and the date is fixed for hearing or is it finally "entertained, when it is heard and disposed of? Numerous cases exist in the law reports in which the word entertained or similar cognate expressions have ben interpreted by the courts. Some of them from the Allahabad High Court itself have been brought to our notice and we shall deal with them indue course. For the present, we must say that if the legislature intended that the word

"file" or receive" was to be used, there was no difficulty in using those words. In some of the statutes which were brought to our notice such expression have in fact been used. For example, under Order 4l Rule l of the Code of Civil Procedure it is stated that a memorandum shall not be filed or presented unless it is accompanied etc. i. S l7 of the Small Causes Courts Act, the expression is "at the time of presenting the application". In section 6 of the Court Fees Act, the words are "file" or "shall be received". It would appear from this that the Legislature was not at a loss for words if it had wanted to express itself in such forceful manner as is now suggested by counsel for the State. It has used the word "entertain" and it must be accepted that it has used it advisedly. This word has come in for examination in some of the cases of the Allahabad High Court and we shall now refer to them

8. In Kundan Lal v Jagannath Sharma, AIR l962 All 547 the Court was concerned with Order 2l rule 90, of the Code of Civil Procedure which had been amended by the

Court by changing the provisions of the original Code. The changed rule is as follows:

"Provided that no application to set aside the sale shall be entertained:

a) upon any ground which should have been taken by the applicant on or before the date on which the sale proclamation was drawn up.

b) Unless the applicant deposits such amount not exceeding l2-l/2% of the sum realised by the sale or furnishes such security as the court may in its discretion fix, except when for reasons to be recorded it dispenses with the requirement of this clause".

9.The word "entertain" is explained by a Divisional Bench of the Allahabad High Court as denoting the point of time at which an application to set aside the sale is heard by the court. The expression "entertain", it is stated, does not mean the same thing as the filing of the application or admission of the application by the court. A similar view was again taken in Dhoom

Chand Jain v Chamanlal Gupta, AIR l962 All 543 in which the learned Chief Justice Desai and Mr. Justice Dwivedi gave the same meaning to the expression "entertain". It is observed by Dwivedi, J. that the word "entertain" in its application bears the meaning "admitting to consideration" and therefore when the court cannot refuse to take an application which is backed by deposit or security, it cannot refuse judicially to consider it. In a single bench decision of the same court reported in Bawan Ram v Kunj Beharilal,AIR l962 All 42 one of us (Bhargava J) had to consider the same rule. There the deposit had not been made within the period of limitation and the question had arisen whether the court could entertain the application or not. It was decided that the application could not be entertained because proviso (b) debarred the court from entertaining an objection unless the requirement of depositing the amount or furnishing security was complied with within the time prescribed. In that case the word "entertain" is not interpreted but it is held that the court cannot proceed to consider the application in the absence of

deposit made within the time allowed by law. This case turned on the fact that the deposit was made out of time. in yet another case of the Allahabad High Court reported in Haji Rahim Bux and Sons v Firm Samiullah and Sons, AIR l963 All 320 a Division Bench consisting of Chief Justice Desai and Mr. Justice S.D.Singh interpreted the words of O 2l R 90 by saying that the word "entertain" meant not "receive" or "accept" but "proceed to consider on merits, or "adjudicate upon".

l9. It has been held that the word "entertain" means to admit to consider,does not mean finally disposed of matter. In Writ Petition No. 5329 of 2005 the revision application was filed on 29.3.l999 and even prior to the Amending Act No.4l of 2000 came into force and the same was entertained by the revisional authority as it was thereafter required to consider finally. Thus in that writ petition provision of section l54(2A) of the said Act would not apply . In the light of the discussion hereinabove I am therefore of the view that in all the cases where the revision applications are filed and entertained subsequent to 23.8.2000 when the provisions of suction l54(2A)

was introduced would be governed by the said provision irrespective of the fact whether the original application for recovery under section l0l has been entertained prior to the amendment or not. I am thus of the opinion that the order passed by the revisional authority dismissing the appeal for non compliance with the provisions of section l54(2A) of the said Act does not require any interference in writ jurisdiction under Art 227 of the Constitution of India. Thus Writ Petition nos 5669 of 2005, 56l7 of 2005 are hereby dismissed.

20. In so far as Writ Petition No.l0772 of 2004 is concerned, though the said writ petition is dismissed on the point of law, both the parties agree that the petitioner has deposited a sum of Rs.5 lacs i.e. Rs. 3 lacs during the pendency of the revision application and Rs.2 lacs after the impugned order was passed covering the 50% of the recovery certificate amount. In the light of the fact that he has already deposited 50% of the recovery certificate amount, I am of the opinion that the same can be treated as compliance under section l54(2A) of the said Act and the petitioner can be given a chance of hearing on merits. In that light of the matter revision application is restored and the authorities are directed to hear

the main revision application on merits and decide the same in accordance with law on or before 3l.3.2006.

2l. In so far as Writ Petition No.5329 of 2005 is concerned in view of the fact that the application was already entertained prior to the introduction of the Amendment Act on 23.8.2000 the order passing dismissing the revision application for non compliance of provisions of section l54(2A) of the said Act is erroneous and the same required to be interfered with. Thus Writ Petition No.5329 of 2005 succeeds and the impugned order dated l7.l.2005 being Exhibit M to the petition is quashed and set aside.The matter is remitted back to the revisional authority for fresh determination of the dispute on merits without insisting upon deposit under section l54(2A) of the said Act. The revision application to be decided on or before 3l.3.2006.

. All the aforesaid petitions are disposed of accordingly. However, there shall be no order as to costs.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY APPELLATE SIDE CIVIL JURISDICTION

Writ Petition No.5329 of 2005

Date of Judgment: December **2005**

For approval and signature of:

The Hon'ble Mr.S.U.KAMDAR J.

1. Whether the Reporters of the local papers may be allowed to see the judgment/order?

2. Whether to be referred to the Reporters or not?

3. Whether Their Lordships wish to see the fair copy of the judgment?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?

5. Whether it is to be circulated to the Civil Judges?

6. Whether the case involves an important question of law and whether a copy of the judgment should be sent to Nagpur Aurangabad and Goa offices?